

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

MASTER DOCKET
18-md-2865 (LAK)

This document relates to: All cases identified in
Schedule A

**STIPULATION AND [PROPOSED] ORDER
LIMITING WAIVER PURSUANT TO RULE 502(d) OF THE
FEDERAL RULES OF EVIDENCE**

WHEREAS, the Customs and Tax Administration of the Kingdom of Denmark (Skatteforvaltningen) (“SKAT”) has filed certain claims against the Plans and individual defendants identified in Schedule A (collectively, the “Defendants”);

WHEREAS, the Defendants intend to assert the defense of reliance on the advice of counsel (the “Defense”), among other defenses;

WHEREAS, Argre LLC had four principals—Richard Markowitz, John van Merkensteijn, Matthew Stein, and Jerome Lhote—who each maintained an equal ownership interest in Argre LLC;

WHEREAS, until 2015, Argre LLC received legal advice about certain matters protected by the attorney-client privilege and/or the attorney work-product doctrine;

WHEREAS, two principals of Argre LLC, Richard Markowitz and John van Merkensteijn, are Defendants who intend to assert the Defense;

WHEREAS, the two remaining principals of Argre LLC, Matthew Stein and Jerome Lhote (the “Non-Parties”), are not parties to the above-captioned matter and have asserted that

documents and communications with counsel that support the Defense (“Privileged Documents” and “Privileged Advice,” respectively) are protected by the attorney-client privilege and/or the attorney work product privilege (the “Privileges”), which Privileges are jointly held by the four principals of Argre LLC;

WHEREAS, the Non-Parties do not consent to a waiver of the Privileges;

WHEREAS, in support of the Defense, Defendants are required to produce relevant Privileged Documents in their possession to SKAT and to testify as to the substance of the Privileged Advice (the “Disclosure”);

WHEREAS, Defendants wish to make the Disclosure without prejudice to the rights of the Non-Parties;

WHEREAS, the Non-Parties do not oppose the relief sought herein;

IT is therefore STIPULATED AND AGREED that, pursuant to Rule 502(d) of the Federal Rules of Evidence, the Disclosure shall not constitute or be deemed a waiver or subject matter waiver by the Non-Parties of the Privileges, or of any other privilege, right, or protection against production or disclosure of the Privileged Documents and Advice or their contents, in this action or in any other proceeding.

IT is further STIPULATED AND AGREED that all documents produced as part of the Disclosure permitted by this Stipulation and Order, as well as any testimony referencing Privileged Advice offered as part of the Disclosure, shall be clearly identified via stamp affixed to every page of such document or testimony transcript that indicates the document or testimony transcript is covered by this Order and shall not be distributed in any way inconsistent with this Order.

IT is further STIPULATED AND AGREED that SKAT shall not disclose any document or testimony transcript designated in accordance with the preceding paragraph to anyone, including any third party, governmental agency, or other department of the Danish government for any reason without further order of this Court, other than to comply with a court order in a domestic or foreign proceeding in which SKAT is a party and that is subject to an order with terms substantially equivalent to the Revised Amended Stipulated Protective Order Governing Confidentiality of Discovery Materials ordered by the Court on November 6, 2020 (“Protective Order”). Nothing in this Stipulation and Order shall be construed to limit the use of any Privileged Document or Privileged Advice for purposes of this litigation, or for purposes of any litigation SKAT may commence in state or federal court against any other alleged participants in the Tax Refund Scheme, consistent with the terms of the Protective Order entered in this case, or its substantial equivalent.

Dated: New York, New York
January 26, 2021

By: /s/ Alan E. Schoenfeld
(e-signed with consent)
Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND
DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
alan.sschoenfeld@wilmerhale.com

*Counsel for Defendants Richard
Markowitz, Jocelyn Markowitz, Avanix
Management LLC Roth 401(K) Plan,
Batavia Capital Pension Plan, Calypso
Investments Pension Plan, Cavus Systems*

By: /s/ Marc A. Weinstein
(e-signed with consent)
Marc A. Weinstein
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004
Telephone: (212) 837-6000
Fax: (212) 422-4726
marc.weinstein@hugheshubbard.com

*Counsel for Plaintiff Skatteforvaltningen
(Customs and Tax Administration of the
Kingdom of Denmark)*

*LLC Roth 401(K) Plan, Hadron Industries
LLC Roth 401(K) Plan, RJM Capital
Pension Plan, RJM Capital Pension Plan
Trust, Routt Capital Pension Plan, and
Routt Capital Pension Plan Trust*

By: /s/ Sharon L. McCarthy
Sharon L. McCarthy
KOSTELANETZ & FINK LLP
7 World Trade Center
New York, NY 10007
Telephone: (202) 740-6999
smccarthy@kflaw.com

*Counsel for Defendants John van
Merkensteijn, III, Elizabeth van
Merkensteijn, Azalea Pension Plan,
Bernina Pension Plan, Bernina Pension
Plan Trust, Omineca Pension Plan,
Omineca Trust, Starfish Capital
Management LLC Roth 401(K) Plan,
Tavros Pension Plan, Voojo Productions
LLC Roth 401(K) Plan, Michelle
Investments Pension Plan, Remece
Investments Pension Plan, and Xiphias
LLC Pension Plan*

SO ORDERED:

Hon. Lewis A. Kaplan
United States District Judge

1/27/21

SCHEDULE A

Case Number	Plan	Defendant(s) Asserting Reliance Defense
18-cv-04833	Raubritter LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01867	Avanix Management LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01895	Batavia Capital Pension Plan	Richard Markowitz
19-cv-01904	Calypso Investments Pension Plan	Jocelyn Markowitz
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01898	RJM Capital Pension Plan	Richard Markowitz
19-cv-01896	Routt Capital Pension Plan	Richard Markowitz
19-cv-01906	Michelle Investments Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01911	Remece Investments LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01924	Xiphias LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01893	Azalea Pension Plan	Elizabeth van Merkensteijn
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	John van Merkensteijn
19-cv-01865	Bernina Pension Plan	John van Merkensteijn
19-cv-01894	Omineca Pension Plan	John van Merkensteijn
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	John van Merkensteijn

Case Number	Plan	Defendant(s) Asserting Reliance Defense
19-cv-01930	Tarvos Pension Plan	John van Merkensteijn
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	John van Merkensteijn
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	Richard Markowitz; Avanix Management LLC
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	Richard Markowitz; Cavus Systems LLC
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan	Richard Markowitz; Hadron Industries LLC
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01794	Battu Holdings LLC Roth 401K Plan	John van Merkensteijn; Omineca Trust
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	John van Merkensteijn; Omineca Trust
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	John van Merkensteijn; Omineca Trust
19-cv-01918	Vanderlee Technologies Pension Plan	John van Merkensteijn; Omineca Trust
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	John van Merkensteijn; Omineca Trust
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	John van Merkensteijn; Omineca Trust

Case Number	Plan	Defendant(s) Asserting Reliance Defense
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	John van Merkenstein; Omineca Trust
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	John van Merkenstein; Omineca Trust
19-cv-10713	2321Capital Pension Plan; Bowline Management Pension Plan; California Catalog Company Pension Plan; Clove Pension Plan; DFL Investments Pension	Richard Markowitz; John van Merkenstein; Bernina Pension Plan Trust; RJM Capital Pension Plan Trust

Case Number	Plan	Defendant(s) Asserting Reliance Defense
	Plan; Davin Investments Pension Plan; Delvian LLC Pension Plan; Laegeler Asset Management Pension Plan; Lion Advisory Inc. Pension Plan; Mill River Capital Management Pension Plan; Next Level Pension Plan; Rajan Investments LLC Pension Plan; Spirit on the Water Pension Plan; Traden Investments Pension Plan	